

FILED

FEB 07 2003

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

KEVIN V. RYAN (CASB 118321)
United States Attorney

CHARLES B. BURCH (CSBN 79002)
Chief, Criminal Division

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH LUPTON,

Defendant.

No. CR 03-40001-DLJ

PLEA AGREEMENT

I, Joseph Lupton, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to a one count Information charging me with bribery in violation of Title 18, United States Code, Section 201(b)(2)(A). I agree that the elements of the offense that the government must prove beyond a reasonable doubt are as follows:

a) I was a public official acting under the authority of the Department of Energy;

b) I agreed to receive something of value (payments of cash) in exchange for being influenced in my performance of one or more official acts; and

PLEA AGREEMENT
CR 03-40001-DLJ

1 c) I acted corruptly, that is, I accepted the items of value with the intent to be influenced in
2 the performance of one or more official acts.

3 I am aware that the maximum penalties for a violation of 18 U.S.C. § 201(b)(2) are as
4 follows:

- | | | | |
|----|----|---|---------------------------|
| 5 | a. | Maximum prison sentence | 15 years |
| 6 | b. | Maximum fine | \$250,000 or three |
| 7 | | | times the amount accepted |
| | | | whichever is greater |
| 8 | c. | Maximum supervised release term | 3 years |
| 9 | d. | Mandatory special assessment | \$ 100 |
| 10 | e | Forfeiture of Right to Hold Public Office | |
| 11 | f. | Restitution | |

12 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
13 the following facts are true:

14 Between 1995 and Spring of 2001, I was a "Technical Release Representative" employed
15 at the Lawrence Livermore National Laboratory (LLNL). In that capacity, I acted as a
16 agent of the Department of Energy. One of my responsibilities was to procure goods and
services requested by other persons working on projects at the LLNL through my use of a
credit card issued to me by the government for that purpose.

17 I became familiar with Larry McCarty who ran the business Certified Machine
18 Manufacturing or CMM. For about one and one-half years, between late 1999 and the
19 Spring of 2001 when I retired, I agreed to receive payments of money and other valuable
20 items from McCarty in exchange for agreeing to award to him small contracts which
21 would be paid through the government credit card assigned to me. Generally, McCarty
would make payments to me after he had received payment from the government for
the work he had invoiced. McCarty and I understood that his invoices would be inflated
by an amount that would allow him to pay me money and still provide a profit on the
work done by CMM

22 In addition to payments of cash, I also received the following items as a result of this
23 arrangement with McCarty: a tool chest, a gun safe, free cement work done at my
24 residence, and gold in the form of six gold coins and two gold chains. I have told the FBI
previously that I believe that I received about \$10,000 to \$15,000 in cash from McCarty
pursuant to my arrangement with him.

25 3. I agree to give up all rights that I would have if I chose to proceed to trial,
26 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
27 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
28

any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

7. I agree that the Sentencing Guidelines should be calculated as follows:

- | | | |
|----|--|-----|
| a. | Base Offense Level, U.S.S.G. § 2C1.1(a) | +10 |
| b. | Amount of bribe: §§ 2C1.1(b)(2)(A), 2F1.1 | +3 |
| c. | Multiple Bribes: § 2C1.1(b)(1) | +2 |
| | Acceptance of responsibility:
(If I meet the requirements of
U.S.S.G. § 3E1.1) | -2 |
| f. | Adjusted offense level | +13 |

I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea.

8. I agree that the court shall order and that I will pay restitution in the amount of \$10,000 and I further agree to forfeit (and provide to the government as restitution) all of my interest in any property or money I received from CMM as part of the offense to which I am pleading guilty, including a tool chest, a gun safe, and gold items including six gold coins and two gold chains which have been received from me by government agents investigating this case, except for whatever ownership interest I have in concrete and concrete work which was performed on my residence and paid for by CMM. I agree that I will make a good faith effort to

1 pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon
2 request of the Court, the government, or the U.S. Probation Office, provide accurate and
3 complete financial information, submit sworn statements and give depositions under oath
4 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes,
5 and release funds and property under my control in order to pay any fine, forfeiture, or restitution.
6 I agree to pay the special assessment at the time of sentencing.

7 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
8 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
9 release (if any); intentionally provide false information to the Court, the Probation Office,
10 Pretrial Services, or the government; or fail to comply with any of the other promises I have
11 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
12 Agreement, then the government will be released from all of its promises below, but I will not be
13 released from my guilty plea.

14 10. I agree that this Agreement contains all of the promises and agreements between
15 the government and me, and I will not claim otherwise in the future.

16 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
17 District of California only, and does not bind any other federal, state, or local agency.

18 The Government's Promises

19 12. The government agrees not to file or seek any additional charges against the
20 defendant that could be filed as a result of the investigation that led to the captioned indictment.

21 13. The government agrees to recommend the Guidelines calculations set out above in
22 paragraph 7 and will not ask for any other adjustments or departures from those calculations.

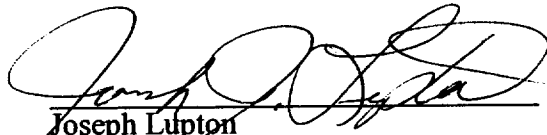
23 The Defendant's Affirmations

24 14. I confirm that I have had adequate time to discuss this case, the evidence, and this
25 Agreement with my attorney, and that he has provided me with all the legal advice that I
26 requested.

27 15. I confirm that while I considered signing this Agreement, and at the time I signed
28 it, I was not under the influence of any alcohol, drug, or medicine.

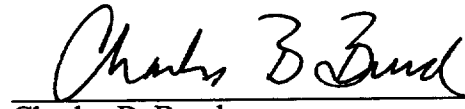
1 16. I confirm that my decision to enter a guilty plea is made knowing the charges that
2 have been brought against me, any possible defenses, and the benefits and possible detriments of
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
4 one coerced or threatened me to enter into this agreement.

5
6
7 Dated: 2-7-03


Joseph Lupton
Defendant

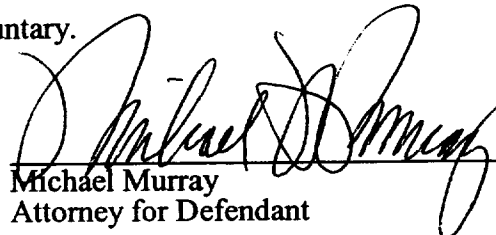
9
10 KEVIN V. RYAN
United States Attorney

11
12 Dated: 2/7/03


Charles B. Burch
Assistant United States Attorney

13
14
15 I have fully explained to my client all the rights that a criminal defendant has and all the
16 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
17 and all the rights he is giving up by pleading guilty, and, based on the information now known to
18 me, his decision to plead guilty is knowing and voluntary.

19
20 Dated: 2/7/03


Michael Murray
Attorney for Defendant